

**SANITIZED DEC. 04-730 C – BY GEORGE V. PIPER – SUBMITTED FOR
DECISION 4/27/05 – ISSUED 5/24/05**

SYNOPSIS

**CONSUMERS' SALES AND SERVICE TAX – BURDEN OF PROOF NOT
MET** – Failure of Petitioner to appear or to otherwise offer any evidence proving that the assessment is incorrect and contrary to law, in whole or in part, mandates that the same be upheld *in toto*.

FINAL DECISION

The Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued a consumers' sales and service tax assessment against the Petitioner. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 15 of the West Virginia Code. The assessment was for the period of October 1, 2003 through June 30, 2004, for tax, interest, through September 15, 2004, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked November 12, 2004, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002].

Subsequently, notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and 121 C.S.R. 1, § 61.3.3 (Apr. 20, 2003).

There was no appearance on behalf of the Petitioner when the hearing was convened. The hearing was held, however, without an appearance on behalf of the

Petitioner, *see* W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. In his petition for reassessment Petitioner stated that no business was conducted during the audit period.

2. Petitioner never appeared at hearing or provided any information to support his contention that no consumers' sales and service tax was due and owing during the period in question.

DISCUSSION

The only issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part.

By failing to appear or to otherwise corroborate what Petitioner stated in his petition for reassessment, this tribunal has no alternative but to uphold the assessment in its entirety.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for

reassessment, the burden of proof is upon a petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to contention that he owed no consumers' sales and service tax for the period in question. *See* 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the consumers' sales and service tax assessment issued against the Petitioner for the period of October 1, 2003 through June 30, 2004, for tax, interest, and additions to tax, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest accrues** on this consumers' sales and service tax assessment until this liability is fully paid.